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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

THOMAS JEFFERSON COFFELT)

No. 40515

Petitioner-Appellant,)

Canyon Co. Case No.

vs.)

CV-2012-3412

STATE OF IDAHO,)

Respondent.)

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON

HONORABLE MOLLY J. HUSKEY
District Judge

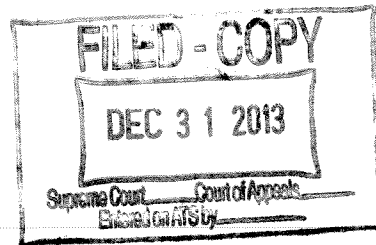
LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

DAPHNE J. HUANG
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
RESPONDENT

THOMAS JEFFERSON COFFELT
IDOC #30459
ISCI – MA - 19A
PO Box 14
Boise, Id 83707



PRO SE
PETITIONER-APPELLANT

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STATEMENT OF THE CASE

Nature of the Case

Thomas Coffelt appeals from the district court's judgment and order dismissing his successive petition for post-conviction relief.

Statement of Facts and Course of Proceedings

Coffelt entered an *Alford*¹ plea to lewd conduct with a minor. State v. Coffelt, 127 Idaho 439, 441 n. 2, 901 P.2d 1340, 1342 n. 2 (Ct. App. 1995). At sentencing, Coffelt moved to withdraw his *Alford* plea, and the district court denied the motion. Id. The district court sentenced Coffelt to a unified term of life with 20 years fixed, to run concurrently with two previously-imposed sentences.² Id. Coffelt filed a Rule 35 motion (in 1992) which the district court denied. Id. Coffelt petitioned for post-conviction relief, asserting ineffective assistance of counsel because his attorney failed to file an appeal at his request. Id. The district court granted the petition and entered an amended judgment from which Coffelt appealed. Id. The Court of Appeals affirmed. Id. at 443, 901 P.2d at 1344.

¹ See North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970).

² Coffelt was convicted of two counts of lewd conduct with a minor and sentenced to concurrent life sentences with 18-year fixed terms. State v. Coffelt, Docket No. 22047, 1996 Unpublished Opinion No. 540 at 1 (Idaho App., February 26, 1996). On Coffelt's Rule 35 motion, the district court suspended his sentences and placed him on probation with intense supervision. Id. After finding Coffelt violated several terms of probation, the district court revoked probation and executed the previously-imposed sentences. Id. at 1-2. The Court of Appeals affirmed. Id. at 4.

In April 2012, Coffelt filed a successive petition for post-conviction relief, pro se, in which he challenged all three of his life sentences. (R., pp. 3-8.) In his second amended petition, filed through appointed counsel, Coffelt challenged only his 20-year fixed sentence, asserting (1) the district court erred in denying his 1992 Rule 35 Motion without a hearing; (2) the district court erred in failing to appoint counsel for his 1992 Rule 35 motion; and (3) he suffered “manifest injustice.” (R., p. 74; Tr., p. 13, Ls. 2-24.)

The state moved for summary dismissal. (R., pp. 101-05.) The district court conducted a hearing on the state’s motion for summary dismissal at which Coffelt’s counsel clarified that the petition asserted error regarding Coffelt’s 1992 Rule 35 Motion. (R., pp. 107-09; see Tr.) The district court granted the state’s motion, finding that Coffelt’s claims were untimely and unsupported by admissible evidence that would warrant an evidentiary hearing. (Tr., p. 23, Ls. 15-23.) The district court also noted that, to the extent Coffelt intended to challenge the length of his sentence, such challenge should be handled on direct appeal, not in post-conviction proceedings. (Tr., p. 23, Ls. 9-14.)

Coffelt timely appealed. (R., p. 111.) On Coffelt’s request, the district court appointed counsel to represent him on appeal. (R., pp. 129-30.) The Supreme Court later granted counsel’s motion for leave to withdraw. (9/30/13 Order.) Coffelt then submitted a number of filings on his own behalf.

ISSUE

Coffelt's issues on appeal are stated throughout his filings to the Court and due to their length will not be repeated here.

The state phrases the issue as:

Has Coffelt failed to show the district court erred in summarily dismissing his petition for post-conviction relief?

ARGUMENT

Coffelt Has Failed To Show The District Court Erred In Summarily Dismissing His Petition For Post-Conviction Relief

A. Introduction

The claims in Coffelt's second amended post-conviction petition challenge the district court's handling of his Rule 35 motion regarding his 20-year fixed sentence. (See Tr., p. 13, Ls. 2-24.) The petition is Coffelt's second concerning this underlying criminal case, and therefore subject to I.C. § 19-4908, regarding successive petitions. Coffelt, 127 Idaho at 441, 901 P.2d at 1342. The district court properly dismissed Coffelt's petition because, applying I.C. § 19-4908 and cases addressing successive petitions, Coffelt's petition was untimely. Also, Coffelt could have raised the petition's claims on direct appeal but did not, thus his claims were forfeited under I.C. § 19-4901(b). Finally, Coffelt offered only conclusory allegations without evidentiary support for his claim of manifest injustice. Accordingly, the district court properly dismissed Coffelt's petition without an evidentiary hearing.

B. Standard Of Review

When reviewing a district court's order summarily dismissing a petition for post-conviction relief, the appellate court reviews the record to determine if there is a genuine issue of material fact which, if resolved in petitioner's favor, would require that relief be granted. Ridgley v. State, 148 Idaho 671, 675, 227 P.3d 925, 929 (2010). Regarding questions of law, the appellate court exercises free review. Rhoades v. State, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009).

C. The District Court Properly Dismissed Claims In Coffelt's Successive Petition As Untimely

A post-conviction claim may not be raised in a successive petition unless the court finds sufficient reason why it “was not asserted or was inadequately raised in the original, supplemental, or amended application.” I.C. § 19-4908. That provision includes no time limit. However, the courts have held that, where a petitioner establishes a sufficient basis for his failure to (adequately) raise his claims in his initial petition, the successive petition must be filed within a reasonable time. Charboneau v. State, 144 Idaho 900, 904-05, 174 P.3d 870, 874-75 (2007) (successive petition should be filed within reasonable time once petitioner's claims are known); Hernandez v. State, 133 Idaho 794, 799, 992 P.2d 789, 794 (Ct. App. 1999) (“[O]ne year is a reasonable time for an inmate in these circumstances to proceed with a successive post-conviction relief action if the initial action was dismissed due to ineffective assistance from the attorney representing the inmate in that proceeding.”) In Charboneau, the petitioner's successive petition was based on information of which he became aware 13 months before he filed his petition. Charboneau, 144 Idaho at 905, 174 P.3d at 875. The Supreme Court found that the 13-month delay was “simply too long a period of time to be reasonable.” Id.

Here, the district court gave Coffelt notice of its intent to dismiss his petition under I.C. § 19-4908. (R., pp. 69-70.) Despite this notice, Coffelt provided no reason – in his Second Amended Petition or at hearing on the state's motion to dismiss – why the claims in his successive petition were not asserted or were inadequately raised in his prior petition. (See R., pp. 73-75;

see also Tr.) Even if Coffelt had provided a sufficient reason for not raising his claims before, the record does not support that he filed his successive petition within a reasonable time. Coffelt filed his successive petition *two decades* after the Rule 35 Motion at issue in the petition. (R., pp. 3, 74.) Given that the Court in Charboneau found a 13-month delay unreasonable, the district court properly determined that Coffelt's petition was untimely. This Court should affirm.

D. The District Court Properly Dismissed Claims That Coffelt Could Have Raised But Did Not Raise, On Direct Appeal

Under I.C. § 19-4901(b), a claim or issue that was or could have been raised on appeal may not be considered in post-conviction proceedings. I.C. § 19-4901(b); Rodgers v. State, 129 Idaho 720, 725, 932 P.2d 348, 353 (1997). The district court addressed this provision at the hearing. (Tr., p. 19, Ls. 17-25; p. 23, Ls. 9-14.) The district court then correctly determined Coffelt's claims that he was denied a hearing and counsel for his 1992 Rule 35 motion, and claim asserting manifest injustice, could have been raised on direct appeal but were not. (Tr., p. 19, Ls. 17-25; p. 23, Ls. 9-14.) Applying I.C. § 19-4901(b), Coffelt forfeited his opportunity to raise the issues. Thus the district court did not err in dismissing the claims, and this Court should affirm on that basis.

E. The District Court Properly Dismissed Coffelt's Manifest Injustice Claim As Unsupported By Admissible Evidence

A claim for post-conviction relief is subject to summary dismissal pursuant to I.C. § 19-4906 "if the applicant's evidence raises no genuine issue of material fact" as to each element of petitioner's claims. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007) (citing I.C. § 19-4906(b), (c)); State v.

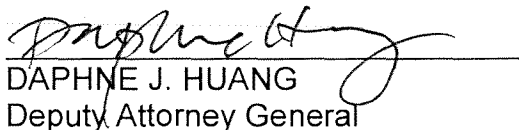
Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003). Although a court must accept a petitioner's un rebutted allegations as true, it need not accept mere conclusory allegations, unsupported by admissible evidence, or conclusions of law. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001)).

As to Coffelt's manifest injustice claim, Coffelt's affidavit in support of post-conviction petition offered no evidentiary support. (R., pp. 7-8.) At the hearing on the state's motion for summary dismissal, Coffelt's counsel explained that the manifest injustice claim was based on the claims that Coffelt was improperly denied a hearing and counsel for his 1992 Rule 35 Motion. (Tr., p. 13, Ls. 14-20.) Coffelt's counsel said of the manifest injustice claim, "I'm relying solely on the record itself to argue that, Judge." (Tr., p. 13, Ls. 9-11.) The district court determined, "There are no grounds articulated in [Coffelt's] petition upon which the court can find manifest injustice." (Tr., p. 22, L. 24 – p. 23, L. 1.) Given the absence of evidence to support the claim, this Court should affirm.

CONCLUSION

For the foregoing reasons the state respectfully requests that this Court affirm the district court's order summarily dismissing Coffelt's petition for post-conviction relief.

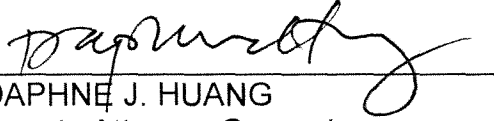
DATED this 31st day of December, 2013.


DAPHNE J. HUANG
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31st day of December, 2013, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

Thomas J. Coffelt
#30459
ISCI – MA-19A
PO Box 14
Boise, ID 83707



DAPHNE J. HUANG
Deputy Attorney General

DJH/pm